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**COPY**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re K.R., a Person Coming Under the Juvenile Court  
Law.

C077435

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD233553)

Plaintiff and Respondent,

v.

O.B.,

Defendant and Appellant.

Father O.B. appeals the juvenile court's orders denying his modification petition and terminating his parental rights. He contends the juvenile court (1) violated his due process rights by terminating his parental rights without a finding of detriment, (2) violated his constitutional right to parent the minor by not elevating him to presumed father status earlier in the proceedings, and (3) abused its discretion by denying his petition to modify. We find no reversible error. Before terminating his parental rights,

the juvenile court made a finding of detriment as to father and that finding was supported by substantial evidence. Father forfeited his claim that he should have been declared a presumed father prior to disposition by not appealing from the disposition order, and no due process concerns warrant an exception to the forfeiture rule. The juvenile court did not abuse its discretion in denying his petition for modification. Accordingly, we affirm the orders of the juvenile court.

### **BACKGROUND**

Minor K.R. was born prematurely in the summer of 2013. He tested positive for opiates and marijuana and suffered from severe withdrawal symptoms. At mother's request, the Sacramento County Department of Health and Human Services (the Department) took the minor into protective custody. Mother named O.B. as the alleged father but did not know how to locate or contact him. Four days after the birth of the minor mother admitted she had been abusing opioids daily. She reported the best thing she could do for the minor "is not to bring him into my world because it isn't safe or healthy." She believed placing him into protective custody would "give him a chance of normalcy." She wanted services but did not believe she would be capable of parenting the minor for at least a year.

O.B.'s parole agent informed the social worker that O.B. had a 2010 robbery conviction and was currently a parolee at large. The social worker contacted O.B. approximately a week after the minor's birth, and O.B. indicated he did not want to participate in the case until a test confirmed his paternity. O.B. and mother visited the minor that day and the next at the hospital. O.B. asked to be added to the birth certificate but did not sign a declaration of paternity. O.B. was arrested for violating parole the day after his second visit with the minor. In addition to the parole violation, he faced charges of felony insurance fraud.

The juvenile court ordered the minor detained. Mother was granted visitation. At the detention hearing on July 19, 2013, the Department recommended against allowing

visitation with O.B. until paternity was established. At O.B.'s request, on August 12, 2013, the juvenile court ordered a paternity test. The juvenile court also advised O.B. that if he were the minor's father and wanted an attorney, the court would appoint one for him.

The Department filed a Welfare and Institutions Code section 300<sup>1</sup> petition on July 16, 2013, alleging the minor had suffered or was at substantial risk of suffering serious physical harm inflicted nonaccidentally by the child's parent (§ 300, subd. (a)) and that the minor had suffered or was at substantial risk of suffering serious physical harm as a result of the parent's inability to provide care (§ 300, subd. (b)). The petition alleged mother had a substance abuse problem and abused opiates and prescription drugs daily during the child's gestation, and the minor was born prematurely, tested positive for drugs at birth, and suffered severe withdrawal symptoms. The petition made no allegations regarding O.B.

Prior to the jurisdictional/dispositional hearing, the Department reported that paternity testing results established O.B. was the biological father of the minor. The Department informed O.B. (father) of the results. Father requested an attorney and the court appointed him counsel.

The Department reported father had no prior relationship with the minor. The Department noted father was not entitled to reunification services, as he was not a presumed parent. The paternal aunt and uncle expressed interest in the minor being placed with them, and the Department was assessing them for placement. The maternal grandmother had also expressed an interest in placement, and the Department was also assessing her for placement. Father was pressuring the paternal aunt not to adopt the minor, and the paternal aunt was concerned about becoming too attached to the minor

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

and worried about stressors related to father's trying to interfere. Ultimately, based on these family dynamics, the paternal aunt decided to let the maternal grandmother have placement of the minor. The Department recommended placement with the maternal grandparents.

On September 9, 2013, the juvenile court found O.B. was the minor's biological father. At the jurisdictional/dispositional hearing on September 13, 2013, the juvenile court found the allegations of the petition true, sustained the petition, and adjudged the minor a dependent of the court.

Also at the dispositional hearing, father informed the juvenile court he wanted to take custody of the minor but could not currently do so given that he was incarcerated. Father argued he had a "strong case to be found a *Kelsey S.* father"<sup>2</sup> but acknowledged he could not demonstrate he had made a full commitment to his parental responsibilities given his incarceration. "He can't -- it's very difficult to attend to a child's emotional needs, particularly a two-month-old, when he's behind bars. Same goes with the financial . . . ." The juvenile court found father's request was premature in that he could not "demonstrate that he's made a full commitment to his parental responsibilities. But, of course, the finding is without prejudice to it being renewed, and the Court would certainly invite a demonstration of that commitment in order to be able to afford this status at a future date."

The juvenile court found by clear and convincing evidence that O.B. was the biological father of the child. The juvenile court could not find that the bypass provisions

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<sup>2</sup> *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 (*Kelsey S.*). A "Kelsey S. father" is a biological father who does not qualify as a presumed father but may attain parental rights equal to the mother's by showing that he promptly came forward to assume his parental responsibilities for the child, financially, emotionally, and otherwise; the child's mother thwarted his efforts to assume his parental responsibilities; and he demonstrated a willingness to assume full custody of the child.

of section 361.5, subdivision (b)(12) applied to father, because the Department had not provided a certified copy of the conviction documents. The court indicated it needed to address the application of section 361.5, subdivision (e)(1) since father was incarcerated, “and the question becomes one of whether or not he would be incarcerated beyond the reunification period.” Father’s counsel informed the court he did not think the court was required to make that analysis, as “Kelsey S. fathers are not statutorily entitled to service as presumed fathers are.

“Inasmuch as [father] may not be able to complete services, the Court can, I think, can simply decline to exercise its discretion to offer him services, and we need not engage in a . . . bypass . . . analysis.” Counsel continued, “that would be my request. The father’s plan is to work on everything he can to -- while he is in custody to address the issues that, of course, brought him there and, of course, issues that will help him parent a child in an effort to establish Kelsey S. or other -- or even presumed paternity status later on down the road. But that would be my request.” The court noted it had discretion to offer services, but “[t]hose services are not being sought at this time, and the Court cannot find that it is in the best interest of the child to be placed with father given the father’s in-custody status . . . .”

The juvenile court ordered the minor removed from mother’s physical custody and ordered the Department to provide mother with reunification services. The juvenile court also ordered the Department to assess whether visits with father while he was incarcerated would be detrimental to the physical and emotional health of the minor.

After conducting the evaluation, the Department found there was no benefit to the minor in visiting father while he was incarcerated, as the prison would not allow physical contact during the visits, the minor was too young to speak, and there were concerns regarding his immune system and the prison environment. The minor suffered respiratory ailments and caught colds easily. In addition, father was housed at a prison approximately 245 miles one-way from the minor’s home. The Department

recommended against visitation for father while he was incarcerated due to detriment to the minor. Father's expected release date was October 30, 2013. However, father had recently been sentenced to serve additional time on a separate case; he hoped to be released by May 2014. Father advised the court that while he wanted a relationship with the minor, given the circumstances of his incarceration and the minor's age, he did not want the minor brought to prison for visitation. Father reported he was trying to participate in services while incarcerated. The Department indicated that upon release, supervised visitation could be arranged.

In February 2014 the Department recommended terminating services to mother and a permanent plan of adoption with the maternal grandparents. The Department had placed the minor with the maternal grandparents on October 11, 2013, and they wanted to adopt him. The minor was doing well in the placement and was a happy, healthy baby. The Department did not know where mother was, and she had not participated in services or visitation. Father remained incarcerated.

At the permanency planning hearing, the juvenile court found mother and father had failed to participate in services, and returning the minor to their custody would create a substantial risk of detriment to the minor. The juvenile court terminated mother's reunification services. The juvenile court also found the minor likely to be adopted, declared adoption as the permanent plan, and set the section 366.26 hearing.

For the selection and implementation report, the Department reported the minor continued to do well in his placement with his grandparents. They were committed to adopting him and providing him stability and permanence.

Father was released from custody on June 3, 2014. He requested visitation with the minor, and the Department arranged supervised visits.

Father filed a section 388 petition and a *Kelsey S.* request. Father requested placement of the minor with him, or services to reunify with the minor. As part of the section 388 petition, father filed a declaration averring he was incarcerated from

August 2, 2013, to June 3, 2014. His family supported his desire to raise the minor and were eager to assist him in caring for the minor, financially and emotionally. By the time of the contested hearing on July 24, 2014, both parents had signed a voluntary declaration of paternity, rendering the *Kelsey S.* issue moot. Based on the declarations, the juvenile court recognized father as the presumed father. As a result of father's changed status, the parties agreed to submit briefing on (1) whether, as the nonoffending noncustodial parent, father was entitled to placement of the minor under section 361.2; (2) whether father was entitled to reunification services or whether the bypass provisions of section 361.5 applied to him; and (3) father's entitlement to either custody of the minor or reunification services under the section 388 petition.

In his original section 388 petition, father requested a “ ‘return to disposition, to decide these issues [of placement and services].’ ” By the time of the hearing, father “no longer believe[d] that ‘disposition’ [was] a necessary hearing to determine issues of safety, fitness, or detriment.” Father argued returning the minor to his care, or providing him reunification services, served the minor's interest in permanency, as the minor could not be released for adoption without a finding father was unfit and there was insufficient evidence to support such a finding. Father acknowledged that at the time of the disposition hearing, he could not meet the requirements of *Kelsey S.* because he could not demonstrate a full commitment to parenting.

The Department conceded father had demonstrated changed circumstances but argued he had not established a change was in the minor's best interests. The minor had lived with the maternal grandparents most of his life and they were the only parents he knew, they had provided him with stability and nurturing, and they wanted to adopt him. Father had no relationship with the minor other than a few visits. He had lived an unstable life, including substance abuse, violence, multiple arrests, convictions, and periods of incarceration.

The minor's counsel argued that to qualify for reunification services, father was required to establish his presumed parent status prior to the section 366.26 hearing. The minor's counsel also contended reunification services would not benefit the minor. The minor was one year old and father had been incarcerated for the majority of the minor's life. They did not have visits, and father had not established a relationship with the minor. The minor was living with his maternal grandparents and doing well there. The maternal grandparents wanted to adopt him.

The Department also filed an addendum report. There had been seven visits between father and the minor since father was released from prison. Each visit lasted from one to two hours, with the maternal grandparents supervising the visits. Father was gentle and appropriate during the visits. At the earlier visits, the minor was fussy and apprehensive, but over time, he became more comfortable. Father had a significant criminal history that included convictions for theft; driving under the influence, causing bodily injury; robbery; insurance fraud; and battery on a spouse or ex-spouse. There was no evidence father was rehabilitated from his criminal activities or was currently capable of parenting the minor. At the time of the section 366.26 hearing, the minor was 14 months old and the case was past the reunification period. Accordingly, the Department recommended the court terminate parental rights.

Father testified at the contested section 388 hearing. He was working in construction, approximately 60 hours a week, earning approximately \$2,800 to \$3,500 per month, and living in a home with his mother. He had discussed child care with the maternal grandparents and agreed that if the minor were placed with him, he would keep the minor at the same child care facility. Father visited with the minor approximately once a week, on Sundays after church. He reported the minor was no longer nervous during visits. Father was reading parenting books and utilizing online parenting resources to educate himself on being a good father.

Father's counsel stated "the simplest analysis of this is just to treat the 388 as -- as what a 388 normally requires, which is a change in circumstances and best interest of -- and prove that the proposed change [is] in the best interest of the children." Father's counsel reported as changed circumstances that father had been released from incarceration, was now a presumed father, and had had a number of positive visits with the minor. Counsel argued, "if there is clear and convincing evidence of detriment to placing a child in [father's] care . . . then we may be sunk here and the Court should not perhaps grant our 388 motion.

"If there isn't, however, then the only options for permanency for [the minor] are either placement with [father] or guardianship because the Court cannot terminate parental rights and free [the minor] for adoption if there's not -- without first making a finding that placement with [father] is clearly and convincingly -- would clearly and convincingly create a detriment to [the minor]." As to the minor's best interests, counsel contended father had immediately requested visits with the minor, was sensitive to the minor's feelings, and behaved gently and appropriately with him. As visits progressed, the minor became more comfortable with father. Father was trying to learn more about being a parent. He had never acted inappropriately around the minor or any other child. Counsel argued the lack of a significant parenting relationship should not control the issue. Thus, counsel argued there was not the clear and convincing evidence of detriment to the minor that would be required to deny father his custodial rights. Accordingly, the minor's best interests were in being placed with father. Counsel noted that given father's criminal history, it was possible he would need an AOD (alcohol and other drugs) assessment, possibly drug treatment and testing, and might also need anger management and domestic violence services.

Father's counsel also clarified the current specific request was placement of the minor in father's care. Counsel conceded, "after reviewing the -- the law, I don't believe that we have caused [*sic*] or, for that matter, much interest in returning to disposition.

[Father] was a part of disposition. We had trouble proving paternity at that point . . . and I think as far as reunification services with a goal of placement with him, I'm not sure that, past the statutory time frame for reunification, whether that is legally tenable as well.

"I think the stronger . . . legal case is for placement with [father] under a -- under a framework of dependent supervision with family maintenance services . . . ."

At the hearing, the Department argued father's circumstances were changing, not changed. But even if the circumstances were changed, the Department argued it was not in the minor's best interests to place the minor with father or to grant father reunification services. The Department clarified that the standard for the section 388 petition was best interests of the child, not detriment. The finding of detriment had to be made relative to terminating parental rights, but not relative to the section 388 petition. Nonetheless, the Department argued it was detrimental to place the minor with father considering his "extremely unstable life, his criminality," "extremely serious convictions starting from the time he was 20 years old and he's now 26," and a current protective order against him. The Department contended it was too early to determine whether father had gained stability. The Department noted the case was beyond reunification and the focus of the case had shifted to the minor's interest in permanence and stability.

The minor's counsel argued the minor was a 14 month old who had no contact with father for the first 11 months of his life. The minor's maternal grandparents have been his primary caregivers. Based on those facts alone, the minor's counsel believed it was not in the minor's best interests to be placed with father.

The juvenile court noted the original petition had focused solely on the mother's conduct, and while father had been incarcerated in the early stages of these proceedings, since his release he had done everything in his power to establish a relationship with the minor. The juvenile court found there were changed circumstances. Father had been released from custody, was studying parenting, and was working toward connecting with

the minor. But, the juvenile court did not believe it was in the minor's best interests to be placed with father. The minor was "on the precipice of permanency" "in a home with an approved home study . . . and with the maternal grandparents who have been raising him for most of his life." The juvenile court found the minor's stability was with the maternal grandparents. The juvenile court found that for the minor to have been placed with father, the Department would have had to provide services. The juvenile court also found a placement with father could be detrimental to the minor as they were just developing their relationship, and it would interrupt the minor's stability and permanency in the hopes father could maintain his liberty and provide a safe and stable environment for the minor. Accordingly, the juvenile court denied the section 388 petition.

As to the section 366.26 hearing, the juvenile court found by clear and convincing evidence that mother's progress in alleviating or mitigating the causes necessitating placement had been absent and father's had been fair. The juvenile court found it likely the minor would be adopted. The juvenile court also found termination of parental rights would not be detrimental to the minor, *and* it would be detrimental to place the child in the care of either parent. The juvenile court terminated parental rights and ordered adoption as the permanent plan.

## **DISCUSSION**

### **I**

#### ***Juvenile Court Made Finding of Detriment***

Father contends the order terminating his parental rights violated his due process rights, as the juvenile court did not make a finding of detriment.<sup>3</sup> We disagree with father's reading of the record.

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<sup>3</sup> In the context of termination of parental rights, a finding of detriment is the "equivalent of a finding of unfitness." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 423 (*Jasmon O.*); see *In re A.S.* (2009) 180 Cal.App.4th 351, 361, fn. 7 (*A.S.*)) "California's dependency

Parents have a fundamental interest in the care, companionship, and custody of their children. (*Santosky v. Kramer* (1982) 455 U.S. 745, 758-759 [71 L.Ed.2d 599, 609-610]; *In re Gladys L.* (2006) 141 Cal.App.4th 845, 848.) Consequently, due process requires that before the juvenile court terminates a presumed father's parental rights, it must find by clear and convincing evidence that placement with the father would be detrimental to the child. (*In re T.G.* (2013) 215 Cal.App.4th 1, 5; *In re Frank R.* (2011) 192 Cal.App.4th 532, 537-539; *P.A.*, *supra*, 155 Cal.App.4th at p. 1211.) However, the finding of detriment need not be made early, at the jurisdictional stage. Therefore, the absence of a jurisdictional allegation or finding of detriment as to father does not prevent the termination of parental rights based on a subsequent finding of detriment. (*A.S.*, *supra*, 180 Cal.App.4th at pp. 360-361; *P.A.*, *supra*, 155 Cal.App.4th at p. 1212.) “[F]indings of detriment, if supported by substantial clear and convincing evidence, may provide an adequate foundation for an order terminating parental rights even in the absence of a jurisdictional finding related specifically to a parent. [Citation.]” (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1214.)

“In reviewing the sufficiency of the evidence on appeal we consider the entire record to determine whether substantial evidence supports the court’s findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order and affirm the order even if other evidence supports a contrary finding. [Citations.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 134-135.)

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scheme no longer uses the term ‘parental unfitness,’ but instead requires the juvenile court make a finding that awarding custody of a dependent child to a parent would be detrimental to the child.” (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1211 (*P.A.*), citing *In re Dakota H.* (2005) 132 Cal.App.4th 212, 224, fn. 3.) Accordingly, rather than using father’s terminology of “unfitness,” we will use the current statutory language of detriment.

In his argument, father makes much of the various points prior to the termination hearing at which the juvenile court did not make a finding of detriment as to him. However, father disregards the fact that at both the permanency planning hearing and the termination hearing, the juvenile court found detriment as to placement with him. At the permanency planning hearing, the juvenile court found that return of the child to the parents would create “a substantial risk of detriment to [the minor’s] physical or emotional well-being.” Then again at the termination hearing, the juvenile court specifically found “it would be detrimental to place the child in the care of either of the parents at this time.” These findings of detriment satisfied father’s due process rights.

Father also argues “detriment cannot be assumed from criminal history alone.” Father’s criminal history was relevant to the finding of detriment, but it was not the sole basis for the finding. Father’s criminal history demonstrated problems with alcohol and domestic violence. These are problems that put children in the same household at substantial risk of harm. (*In re E.B.* (2010) 184 Cal.App.4th 568, 575 (*E.B.*); *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 (*Heather A.*)) Nothing in the record indicates father had done anything to begin to remedy these concerns. Moreover, the minor had lived with his maternal grandparents for 11 of his 14 months. He was doing well in their home and the maternal grandparents wanted to adopt him. They had provided the minor with stability and wanted to provide that stability permanently through adoption. By contrast, because father was incarcerated during most of these proceedings, he and the minor had only just begun to develop a relationship. The extent of that relationship consisted of six or seven supervised visits of an hour or two each. To remove the minor from the maternal grandparents and place him with father would have taken the minor from the only home and parents he had known to place him with a virtual stranger. The separation trauma resultant from removing a child from his settled home risks significant psychological damage that would be detrimental to the minor. (*In re A.F.* (2014) 227 Cal.App.4th 692, 704 (*A.F.*); *Adoption of Michelle T.* (1975))

44 Cal.App.3d 699, 706-707 (*Michelle T.*.) Accordingly, there was substantial evidence supporting the finding of detriment. This was an adequate basis for terminating parental rights.

## II

### ***Father Forfeited Claim as to When He Should Have Been Declared Presumed Father***

Father contends the trial court violated his constitutional right to parent the minor by not elevating him to presumed father status earlier in the proceedings. He contends his elevation to presumed father status “could have been achieved much earlier had the court considered [his] request to be a *Kelsey S.* father and fulfilled its obligation to establish paternity.” Specifically, father complains the juvenile court failed to conduct an adequate paternity voir dire at the detention hearing, failed to provide him a Judicial Council form JV-505 (Statement Regarding Parentage), and did not “expeditiously pursue resolving the issue of paternity or advising [father] of his right to a court trial to demonstrate paternity.” Father acknowledges the juvenile court promptly offered him a paternity test, and upon establishing biological paternity, the juvenile court immediately appointed an attorney for him. Nonetheless, father contends he was prejudiced by the juvenile court’s failures because (1) at the detention hearing the trial court did not order visitation for him, since paternity had not been established; (2) the Department did not conduct a background interview with him for the jurisdiction report because paternity had not been established; (3) the Department did not consider father’s sister, the paternal aunt, to be a relative or nonrelative extended family member for purposes of placement; and (4) he was not entitled to reunification services.

The failures and rulings father complains about occurred prior to the disposition hearing. In a juvenile dependency proceeding, the dispositional order is the judgment for purposes of appeal. (§ 395; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1149-1150.) “A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after

judgment.” (§ 395, subd. (a)(1).) “ ‘ “A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order.” [Citation.]’ [Citations.]” (*In re S.B.* (2009) 46 Cal.4th 529, 532.) Here, father could have challenged the decisions regarding paternity, the placement order, and the denials of visitation and reunification services in an appeal from the disposition order, but he did not. (§ 395; *Meranda P.*, *supra*, 56 Cal.App.4th at p. 1150.) Thus, these issues are not properly before us in this appeal from the order terminating parental rights.

The forfeiture “rule balances the interest of parents in the care and custody of their children with that of children in expeditiously resolving their custody status. [Citation.] In most instances, a parent’s due process interests are protected despite the application of the [forfeiture] rule because the dependency system has numerous safeguards built into it to prevent the erroneous termination of parental rights. [Citation.]” (*In re M.F.* (2008) 161 Cal.App.4th 673, 681-682.) The forfeiture rule will be enforced unless due process forbids it. (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1079.) The forfeiture rule will not be enforced where the parent can show “some defect that fundamentally undermined the statutory scheme so that the parent would have been kept from availing himself or herself of the protections afforded by the scheme as a whole.” (*In re Janee J.* (1999) 74 Cal.App.4th 198, 208.) There are, however, circumstances that may warrant an exception to the forfeiture rule. We must review the particular facts of each case to determine whether such an exception should be made.

The errors complained of here do not warrant an exception to the forfeiture rule. The difference in father’s status as a biological father or a presumed father was not the basis for many of the decisions complained of, and to the extent it was, it is not reasonably probable a different decision would have been made in the absence of any claimed error.

The decision not to place the minor with the paternal aunt was unrelated to father's status. Rather, in consideration of family dynamics, the paternal aunt withdrew her request for placement in favor of the maternal grandparents. This decision was, in part, based on conversations the aunt had with father and her concerns he would interfere.

Similarly, the denial of visitation was unrelated to father's status. Initially, the decision was related to health concerns of the minor visiting father in prison. Later, based on those health concerns, father withdrew his request for visitation while he was incarcerated.

As to father's *Kelsey S.* claim, throughout the proceedings father repeatedly acknowledged he could not meet the *Kelsey S.* requirements because he could not demonstrate he had made a full commitment to parenting. Furthermore, when it is the father's own criminal activity that prevents him from making that parental commitment, he does not meet the criteria for *Kelsey S.* rights. (*Adoption of O.M.* (2008) 169 Cal.App.4th 672, 680.)

As to reunification services, again there is no prejudice. Father explicitly declined to seek reunification services. Because he declined services, we need not speculate on whether his apparent robbery conviction or the length of his incarceration or both would have operated to render harmless any error in failing to find him presumed (and thus presumptively entitled to services) at an earlier date.

Because there was no fundamental defect in these proceedings, father's claims are forfeited. The alleged errors did not deprive father of visitation, placement of the minor with his relatives, or reunification services. In short, father does not allege the type of fundamental error that would support an exception to the forfeiture rule. Since father did not appeal either of the juvenile court's placement orders or disposition orders, this contention is forfeited on appeal.

### III

#### ***Juvenile Court Properly Denied Father's Section 388 Petition***

Father's final contention is that the juvenile court abused its discretion when it denied his section 388 petition. He claims the court erred in finding placement with him would not be in the minor's best interests because placement with the child's presumed father is presumptively beneficial and that presumption was not overcome.

Section 388 permits modification of a dependency order if the moving party demonstrates a change of circumstance or new evidence and if the proposed modification is in the best interests of the minor. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 (*Kimberly F.*)). The party petitioning for modification has the burden of proof by a preponderance of the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 48.) The best interests of the child are of paramount consideration when a petition for modification is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child, the juvenile court looks to the needs of the child for permanence and stability. (*Ibid.*) A modification petition "is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*Jasmon O., supra*, 8 Cal.4th at p. 415.)

Here, the juvenile court found father had established changed circumstances. Nonetheless, father had not met his burden to establish that placement with him was in the minor's best interests. The juvenile court found the minor's need for stability was best met by remaining placed with the maternal grandparents.

At the hearing, father's only argument was that placement with him was in the minor's best interests and was based on his claim that there was insufficient evidence to support a finding of detriment against him. Father contended that in the absence of this evidence, the minor could not be released for adoption; thus, placing the minor with father would best serve the minor's interest in permanency. His argument on appeal

continues to rely on the premise that there is not sufficient evidence to support a finding of detriment. As noted above, there was. Father did not allege any facts indicating that the minor's need for permanence and stability would be promoted either by a potentially lengthy period of reunification services or by placement with a parent who had been absent most of the minor's life.

The evidence cited above supporting the finding of detriment also supports the juvenile court's finding regarding the minor's best interests. "[T]he strength of a child's bond to his or her present caretakers, and the length of time a child has been in the dependency system in relationship to the parental bond are also vital. [Citation.] While the bond to the caretaker cannot be dispositive [citation] . . . the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion. [Citation.]" (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531.) The minor has lived with his maternal grandparents for almost all of his life, and father is a virtual stranger to the minor. To remove the minor from the only caretakers he has known risks causing the minor significant psychological damage. (*A.F.*, *supra*, 227 Cal.App.4th at p. 704; *Michelle T.*, *supra*, 44 Cal.App.3d at pp. 706-707.) Moreover, the record does not indicate father is currently ready to parent the minor. He has demonstrated problems with alcohol and domestic violence. There is no indication he has made any effort to address these problems. The nature of these problems puts children in the same household at substantial risk of harm. (*E.B.*, *supra*, 184 Cal.App.4th at p. 575; *Heather A.*, *supra*, 52 Cal.App.4th at p. 194.) They are also entrenched problems, both difficult and time consuming to remedy. Even father's counsel acknowledged father would likely need significant services before he was ready to parent the minor. Childhood cannot wait for a parent to establish readiness for parenting. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.)

The juvenile court's ruling makes clear it properly considered the minor's need for permanence and stability in denying father's petition. Based on this record, the juvenile court did not abuse its discretion in denying the section 388 petition.

**DISPOSITION**

The orders of the juvenile court are affirmed.

\_\_\_\_\_  
RAYE, P. J.

We concur:

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ROBIE, J.

\_\_\_\_\_  
DUARTE, J.